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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products  
Liability Litigation

No. MD-15-02641-PHX-DGC

DORIS JONES and ALFRED JONES, a  
married couple,

Plaintiffs,

v.

C.R. BARD, INC., a New Jersey  
corporation and BARD PERIPHERAL  
VASCULAR, an Arizona corporation,

Defendants.

**PLAINTIFF'S MOTION *IN LIMINE* #5  
AND MEMORANDUM IN SUPPORT  
TO EXCLUDE EVIDENCE OF BARD  
EMPLOYEES' FAMILY MEMBERS  
OR FRIENDS HAVING BARD IVC  
FILTERS**

(The Honorable David G. Campbell)

(Oral Argument Requested)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE* TO  
EXCLUDE EVIDENCE OR ARGUMENT THAT BARD EMPLOYEES' FAMILY  
MEMBERS OR FRIENDS HAVE BARD IVC FILTERS**

Plaintiff moves *in limine* for an Order precluding evidence or argument alleging that  
Bard employees or their family members have received Bard IVC filters.

**MEMORANDUM OF LAW**

In the recent *Booker* trial, Bard witnesses twice vouched for the safety and efficacy  
of Bard's IVC filters by asserting that members of their own family had received Bard's  
filters:

1 Q. Did you continue to believe that the Recovery filter provided a valuable  
2 therapeutic tool to doctors?

3 A. Yes, I did, and *one of my family members received the product.*

4 *Booker* Trial Transcript, Shari Allen O’Quinn Direct Examination, Day 7, March 23,  
5 2018, at 1557:19-22 (emphasis added).

6 Q. [Discussing failure rates for recipients of Bard IVC filters] Mr. Modra,  
7 these numbers are people; right?

8 A. I understand that.

9 Q. They are people with names; right?

10 A. *Some my relatives.*

11 *Id.*, Chad Modra Cross-Examination, Day 10, March 28, 2018, at 2376:23-2377:1  
12 (emphasis added). This testimony is improper, unfairly prejudicial, irrelevant, and creates  
13 side issues that will waste time at trial. As such it should be prohibited under Federal  
14 Rules of Evidence 401-403. Also, because there is no evidence in the record whatsoever  
15 as to the medical history of these alleged family member recipients of Bard IVC filters,  
16 this testimony lacks foundation and is prohibited by Rule 602.

17 Bard seeks to have its employees offer this information in order to implicitly  
18 “vouch” for the safety and efficacy of its filters. But the medical history of unnamed and  
19 undisclosed Bard employee family members is entirely irrelevant to the claims and  
20 defenses in this case. The specific circumstances of those purported Bard IVC filter  
21 implantations and any follow-up monitoring or complications are likely wildly different  
22 from Plaintiff’s medical course or experience. Certainly any even limited relevance of  
23 this “defense” are substantially outweighed under Rule 403 by unfair prejudice, confusing  
24 the jury with a side issue, and forcing Plaintiff to waste time responding to these  
25 assertions that weren’t even prompted by questioning. Defendants and courts in other  
26 drug and medical device MDLs have acknowledged that such trial testimony is improper.  
27 *See In re Prempro Prod. Liab. Lit.*, 2006 WL 3806391, at \*2 (E.D. Ark. 2006) (granting  
28 “Plaintiff’s Motion in Limine No. 9 to Bar Testimony by Wyeth Employees, Witnesses,  
Experts, or Counsel Regarding Their Personal Use of Premarin or Prempro” because it  
was unopposed by defendants).

1 Finally, even assuming *arguendo* that these issues are somehow relevant and  
2 potentially admissible under Rules 401-403, and Bard's employee witnesses attempt at  
3 trial to lay foundation for their assertions about their family members' medical history to  
4 pass muster under Rule 602, Bard's "we put our filters in our own family members"  
5 defense is not a defense to Mrs. Jones' claims. Plaintiffs chose to not pursue the medical  
6 history of Bard employees including requests for medical records and additional  
7 depositions of those family members during the discovery period as that likely would  
8 have been met with opposition including claims of harassment. Plaintiffs did not  
9 anticipate that Bard would have two of their witnesses state gratuitously in open court that  
10 they had family members who had Bard IVC filters.

11 Accordingly, Plaintiff respectfully requests an Order granting this motion and  
12 prohibiting at trial all evidence and argument relating to the receipt of Bard IVC filters by  
13 any Bard employee or family member of a Bard employee.

14 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of April, 2018.

15 GALLAGHER & KENNEDY, P.A.

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17 By: /s/ Mark S. O'Connor  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of April, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Jessica Gallentine

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